

DISCUSSION PAPER **"FIJI MULTIPARTY GROUND RULES"**

(Hon. Krishna Datt, Minister for Labour and Industrial Relations)

Fiji Labour Party National Council Meeting, 19th August 2006

1.0 INTRODUCTION

1.1 This paper provides a critical analysis of the multiparty ground rules for the multiparty Government forwarded by the Hon. Prime Minister and Hon. Mahendra Chaudhry, as attached, and recommends a progressive way forward to sustain the good faith relationship in the multiparty Cabinet in the spirit of Section 99 of Fiji's Constitution.

2.0 PRIME MINISTER'S GROUND RULES

- 2.1 This is outlined in the Prime Minister's letter to the Parliamentary Leader of the Fiji Labour Party, Hon. Mahendra Chaudhry of 4th July, 2006.
- 2.2 He suggested an Accord on the ground rules that would bind all political parties represented in the House of Representatives. They will focus on SDL and Labour Party, including other Parliamentary businesses in the scrutiny of Government policies and Bills.
- 2.3 He proposes that Government policies and Bills to follow the current Cabinet and Parliamentary rules and guidelines through the Cabinet, Cabinet Subcommittee, Lower House, Parliament Sector Standing Committee, Senate and Senate Subcommittee before HE President's assent. However, where there are major differences between the SDL and FLP Manifestos, full discussions on a case by case basis to be referred to a Cabinet Subcommittee, chaired by the PM.
- 2.4 He assures that the decision making process in Cabinet is by consensus to ensure that all points of view are taken into account. When differences remain, PM may ask the Minister to withdraw the paper for reconsideration and further consultations or refer to a Cabinet Subcommittee for further discussions.
- 2.5 Under Section 99(9) of the Constitution, the PM has consulted the FLP Leader resulting in the FLP members of Cabinet and FLP being part of Government and the Leader of UPP being the Leader of the Opposition.

The PM is of the view that FLP is part of Government and not in Opposition. Therefore, the normal Cabinet and Parliamentary process applies. But on contentious issues, the Cabinet Subcommittee and the Joint Parliament Sector Committees are adequate to resolve political differences on policies and Bills.

3.0 FLP LEADER'S GROUND RULES

- 3.1 However, Hon. Chaudhry is contending the view suggested by the PM, maintaining that he needs to be consulted and that FLP members in Cabinet are still under the FLP control and expected not to compromise its policy stand on contentious issues such as the Land & ALTA, Affirmative Action, Qoliqoli Bill and Reconciliation & Unity Bill.
- 3.2 He still advocates a confrontational and adversarial approach to conflict resolution rather than through good faith that is based on respect, mutual trust consensus building and fair dealings. He expects everyone in the FLP to operate in the confrontational mode, rather than empowering his trust on the FLP members in Cabinet to advocate for the FLP positions through the current mechanisms.

4.0 CRITIQUE & ANALYSIS

Concurrence of FLP National Council

- 4.1 Hon Chaudhry's position to formalize Labour MP's joining the SDL Cabinet at the National Council Meeting of 24th June 2006 was late in the day considering that the Management Board and FLP Parliamentary Caucus both approved in joining the multiparty Cabinet. HE President has given his legal consent with the people, and the multiparty Government must move forward in good faith to bring healing to the nation rather than being hijacked by bad faith on technicalities.

Party loyalty and obligations

- 4.2 Hon. Chaudhry is of the firm view that FLP members in Cabinet should owe their primary allegiance to the Party and not the Cabinet since the interest of the Party must remain paramount and no member, whether an MP or Cabinet Minister is above the Party – reference: Article 7 of the FLP Constitution.

- 4.3 However, the current FLP Constitution was written under the underlying assumption that the FLP will only enter into a Westminster system of Parliament where there is a majority Party or Coalition leading Government and a clear Opposition comprising the minority Party or Parties. Obviously, Article 7 and the whole FLP Constitutions need urgent changes to include and facilitate the good faith multiparty Cabinet arrangement, especially on the trust bestowed on FLP Cabinet members to advocate for the Party in Cabinet.
- 4.4 I have consistently advocated that the Party Constitution should be revised and realigned itself with the 1997 Constitution and by Good Governance principles of transparency and accountability.

Principles and Objectives of the Party

- 4.5 Hon. Chaudhry exhorts that all FLP members of Cabinet are bound by Party principles and policies as referred to under Article 4 of the Party Constitution.
- 4.6 In response to this position, the FLP Constitution (and the SDL Party Constitution) should be completely overhauled and aligned to national consensus building by the Parties, aligning them to the good faith social and political dialogue culture under the current multiparty Government.
- 4.7 The current FLP Constitution generally reflects colonial divide and rule heritage, values, norms and institutions that have outlived their usefulness. It only strengthened the adversarial nature of political relationships to the detriment of the progressiveness and growth of the Party and its members and the nation as a whole.
- 4.8 It should have clear good governance provisions of good faith, including progressive dispute resolution provisions that apply for differences within the Party and especially the resolution of policy differences between parties in Cabinet and Parliament.
- 4.9 The stand by Hon. Chaudhry that Party loyalty is superior to national loyalty in Government smacks of political fundamentalism that fuels confrontation without compromise for the national good. This stand does nothing to reform the adversarial culture of conflict resolution in favour of mutual dialogue minimizing the need for judicial intervention. To facilitate this paradigm shift in the context of emerging international challenges, a complete overhaul of current FLP Constitution is therefore necessary.

Conflicting Policies

- 4.10 Here, a general guideline has been set by the Supreme Court Judgment of July 2003 on the multiparty Cabinet issue. The decision is very clear on the conventions of collective responsibility and Cabinet confidentiality and it also asserts that this arrangement must "respond to division and allow conflict in Cabinet to be managed so that effective government is possible".
- 4.11 As mentioned before, these differences can be effectively resolved under the Cabinet Subcommittees and Joint Parliamentary Sector Committees currently been utilized successfully. Section 99 aims to encourage debate on contentious policies including debating across party lines.
- 4.12 Therefore, in the power sharing context of the multiparty Government, differences are viewed as healthy and the main challenge for the FLP is to lobby its stand through the art of engaged dialogue, discussion, negotiation, persuasion, compromise and developing mutual trust across party members in Cabinet and outside Cabinet to eliminate bad faith to sustain a healthy political marriage for the common benefit of all races and sectors of the nation, and remove marginalization.
- 4.13 This means that the FLP is going into Cabinet with its own policies and national agenda just like any party. However, the approach in settling the differences will have to be in good faith rather than the current adversarial and confrontational approach that destroys the multiparty arrangement and against the letter and spirit of the Fiji Constitution as ruled by the Supreme Court.
- 4.14 One point needs to be made clear. In the context of the multiparty Cabinet, the Fiji Constitution is the supreme law of the land and not the FLP Constitution or the SDL Constitution or the UPP Constitution or any Party's constitution. Therefore, whilst all Parties will have their own Constitutions, Manifestos and policies, common sense should tell us that national governance supersedes party governance in a multiparty Government.
- 4.15 Therefore, on contentious policies and Bills, the SDL and FLP Cabinet members should attempt consensus building and compromises to reach an amicable win-win position, rather than embark on adversarial and no compromise approach. We should learn from the conflicts around the whole world and appreciate before its too late that it is better to work together in good faith rather than confront in an adversarial approach which

normally decays into open conflicts in the long run – an outcome none of us including our future generations would like.

- 4.16 The danger of FLP losing its identity under the multiparty is misconceived and has the element of mistrust on the capabilities and talents of FLP members in Cabinet. This is bad faith on the part of FLP leadership and others who share the misconception that we are “selling out” to SDL which is tainted by some as corrupt and lack respect for the rule of law.
- 4.17 On the contrary, FLP members’ inclusion is a breadth of fresh air for Government and the people of Fiji who showed overwhelming support not seen in the political history of this country. We must exploit our situation and be change agents from inside the political system and not a bystander with expertise only in opposing and going to courts and international bodies for sanction, justifiably as it may be in some cases..
- 4.18 We have to grow up and grow straight with maturity and hold ourselves with dignity and confidence in this new political arrangement without fear but we must hone our new political skills of effective good dialogue and persuasion within the multiparty system. We have the talent and capacity to deliver within and outside Cabinet and still maintain our distinctive FLP flavour. Mind you, this flavour is not only the curry flavour – it is a mixed Fiji flavour for all our people to taste and like to eat it all the time.

5.0 CONCLUSIONS

- 5.1 Most of the “Key policies and Minimum Common Programme” outlined by Hon. Chaudhry in his submission as campaigned strongly by FLP in the 2006 general elections are also top priority by the Multiparty Cabinet. For example the urgent need to revitalize the national economy, alleviating poverty and creating jobs, restoring law and order, ending discrimination, promoting agricultural growth, stamping out corruption and abuse of public funds and dismantling monopolies in the market place.
- 5.2 However, the areas of differences are small but of course significant and challenging. It covers the PRTU Bill, ALTA & Land issues, Affirmative Action, Qoliqoli and Land Claims Tribunal. These differences are capable to be handled within the multiparty Cabinet system with effective and engaged dialogue and advocacy by FLP members in Cabinet and those outside Cabinet.

6.0 RECOMMENDATIONS

- 6.1 The choice of the Party Leader on who to represent the Party in the multiparty Cabinet must have clear established criteria.
- 6.2 Having decided the multiparty Cabinet Ministers, the Party Leader and Party members must fully trust them to carry out the concerns of the Party in Cabinet.
- 6.3 The Party Cabinet Ministers must be free to vote, discuss and arrive at a consensus in Cabinet. They should also uphold Cabinet solidarity and confidentiality for the promotion of good governance.
- 6.4 Once appointed into Cabinet, there should be no more directives from the Party on which way any Party Minister should vote.
- 6.5 On policy issues requiring simple majority in the House, the Party and its members are to use effective influence strategies in the House.
- 6.6 Where special majority is required in the House, it is the privilege of the majority Party to cajole the minority Party. This is where compromise is to be worked out. This can be done through inter-party consultations before Cabinet discusses the issue or in Cabinet Special Committees if it has already reached Cabinet.
- 6.7 The Party must learn to trust its Cabinet colleagues to work in the national interest, because that is what the principles of the Labour Party is all about.
- 6.8 As a founding member, I can categorically state that the principles of the Fiji Labour Party is clearly advocated in multi-racialism, inter-culturalism and the dominance of national concerns over narrow parochial and sectarian views.
- 6.9 We need to heed the experience of the New Zealand Government in their learning curve and successes with the multiparty Government, especially with their ground rules in resolving policy areas of conflicts between Parties.

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